BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Gulf Power Company.	DOCKET NO. 110138-EI ORDER NO. PSC-12-0400-FOF-EI ISSUED: August 3, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER DENYING GULF POWER COMPANY'S MOTION FOR RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

This proceeding commenced on July 8, 2011, with the filing of a petition for a permanent rate increase by Gulf Power Company (Gulf or Company). Gulf requested an increase in its retail rates and charges to generate $93,504,000 million in additional gross annual revenues. Gulf based its request on a projected test year ending December 31, 2012. The Company sought the inclusion of Gulf's investment associated with the Company's North Escambia site of $26,751,000 ($27,687,441 system) in rate base as Property Held for Future Use (PHFU). This amount included 2,877,000 ($2,977,838 system) in accrued carrying charges associated with the North Escambia site, which Gulf argued were permissible pursuant to the deferred accounting treatments afforded to "site selection" costs as set forth in Rule 25-6.0423, Florida Administrative Code (F.A.C.). The Office of Public Counsel (OPC), Federal Executive Agencies (FEA), Florida Retail Federation (FRF), and Florida Industrial Power Users Group (FIPUG) intervened in this proceeding (collectively "Intervenors").

We held four days of technical hearings concerning Gulf's request on December 12-15, 2011. Thereafter, on April 3, 2012, upon consideration of the evidentiary record, the post-hearing briefs of the parties, and our staff's recommendation, we issued Order No. PSC-12-0179-FOF-EI (Final Order), granting in part and denying in part Gulf's petition. The Final Order provided, in part, for the exclusion of $26,751,000 ($27,687,441 system) from rate base representing the Company's costs associated with the North Escambia site as PHFU. In addition, the Final Order specified that Gulf shall not be permitted to accrue carrying costs for the North Escambia site and as such, required Gulf to adjust its books to remove the 2,877,000 ($2,977,838 system) in accrued carrying charges.

On April 18, 2012, Gulf filed a Motion for Reconsideration (Motion) seeking reconsideration of only a portion of the costs associated with the North Escambia site in the amount of $22,674,000 ($23,467,543 system). This limited amount represents the sum of the land costs, other site acquisition costs, and the site investigation costs associated with the North Escambia site. The costs excluded from reconsideration in Gulf's Motion pertain to the carrying costs accrued through December 2011 on the incurred investment. Gulf also filed a Request for Oral Argument concurrently with its Motion.

On April 25, 2012, the Intervenors in this case jointly filed their response in opposition to the Company's Motion (Response). The Intervenors also filed a separate joint response in opposition to Gulf's Request for Oral Argument.

This Order addresses the Motion and the Request for Oral Argument. We have jurisdiction over the matter pursuant to Sections 366.06(2) and (4), and 366.071, Florida Statutes (F.S.).

REQUEST FOR ORAL ARGUMENT

Rule 25-22.0022(7)(a), F.A.C., provides that oral argument at an Agenda Conference will only be entertained for recommended orders or dispositive motions such as a motion for reconsideration of final orders. Further, Rule 25-22.0021(1), F.A.C., provides for oral argument before the Commission as follows:

> Oral argument must be sought by separate written request filed concurrently with the motion on which argument is requested, or no later than ten (10) days after exceptions to a recommended order are filed. Failure to timely file a request for oral argument shall constitute waiver thereof. Failure to timely file a response to the request for oral argument waives the opportunity to object to oral argument. The request for oral argument shall state with particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating the issues to be decided, and the amount of time requested for oral argument.

Gulf timely filed its Request for Oral Argument concurrently with its Motion. In its request, Gulf asserted that oral argument would allow counsel for Gulf to further discuss the factual grounds, applicable law and legal standards that form the basis for its Motion. Gulf asserted that the unprecedented nature of our decision with respect to the exclusion of costs associated with the North Escambia site from PHFU and the fact-intensive nature of the analysis which led Gulf to procure the North Escambia site will lead to questions from this Commission. As such, Gulf argued that oral argument was necessary to allow counsel for Gulf to respond to questions concerning the factual basis and legal grounds supporting the Company's Motion.

The Intervenors timely filed their joint response in opposition to Gulf's Request for Oral Argument. The Intervenors asserted that there is neither controversy nor lack of clarity regarding the legal standard governing a motion for reconsideration, which is to bring to the attention of the decision maker a point of fact or law that the forum overlooked or failed to

consider when making its decision. The Intervenors asserted that equally well established is the principle that it is not the purpose of a motion for reconsideration to seek to reweigh the evidence. The Intervenors argued that in the instant case, oral argument is not needed to demonstrate that in its Motion, Gulf failed to adhere to the appropriate standard. Rather, the Intervenors contended that the Motion is an impermissible effort to have us reweigh the evidence in the record. As such, the Intervenors asserted that granting oral argument on a motion for reconsideration that is clearly impermissible on its face, simply because the pleading is lengthy and elaborate, would invite other parties to similarly fashion overlong motions for reconsideration contrary to the limited purpose of such a motion. Accordingly, the Intervenors requested that Gulf's Request for Oral Argument be denied.

At our Agenda Conference, held on June 19, 2012, pursuant to our discretion under Rule 25-22.0021(2), F.A.C., we granted Gulf's Request for Oral Argument. We also allowed oral argument by the Intervenors on Gulf's Motion.

MOTION FOR RECONSIDERATION

Standard of Review

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering our Order. This standard has consistently been cited by us in analyzing motions for reconsideration. In prior orders, we have relied on several Florida cases as precedent. Both Gulf and the Intervenors cite many of these cases in support of their respective Motion and Response. A brief examination of these cases will provide insight into the limited scope of our review of motions for reconsideration.

Both Gulf and the Intervenors reference State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Jaytex sets forth the limited nature of motions for reconsideration. In Jaytex, the court stated:

> The sole and only purpose of a petition for rehearing is to call to the attention of the court some fact, precedent or rule of law which the court has overlooked in rendering its decision. Judges are human and subject to the frailties of humans. It follows that there will be occasions when a fact, a controlling decision or a principle of law even though discussed in the brief or pointed out in oral argument will be inadvertently overlooked in rendering the judgment of the court. There may also be occasions when a pertinent decision of the Supreme Court or of another District Court of Appeal may be rendered after the preparation of briefs, and even after oral argument, and not considered by the court. It is to meet these situations that the rules provide for petitions for rehearing as an orderly means of directing the court's attention to its inadvertence.
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> * * *

> Certainly it is not the function of a petition for rehearing to furnish a medium through which counsel may advise the court that they disagree with its conclusion, to reargue matters already discussed in briefs and oral argument and necessarily considered by the court, or to request the court to change its mind as to a matter which has already received the careful attention of the judges, or to further delay the termination of litigation.

Id. at 818-819. Furthermore, the court explained that it is not necessary to respond in its opinion to every argument and fact raised by each party, stating:

> An opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant. For this reason it frequently occurs that an opinion will discuss some phases of a case, but will not mention others. Counsel should not from this fact draw the conclusion that the matters not discussed were not considered.

Id. at 819.

Both Gulf and the Intervenors also cite Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974), in which the Court overturned an order which had been reconsidered by us. Bevis involved a matter in which we had denied a statewide certificate of public necessity and convenience for transportation of household goods. We subsequently granted a motion for reconsideration reversing its decision and granting the certificate. Our basis for granting the motion for reconsideration was that the evidence had been reconsidered in light of the "relaxed" standard of proof for household goods carriers' applications (a facet already considered) and that extraordinary population growth in a mobile society tends to lessen the adverse impact on existing carriers.

The Florida Supreme Court, in reviewing our decision, noted:

> [t]his order did not include any new findings of fact, nor did it recede from the findings made in the previous order; it merely stated that the PSC changed its mind upon re-examining the evidence in light of the 'relaxed' standards applicable – which were the very same standards which the PSC stated it was following when it entered its original order denying the application.

The Court overturned our decision, stating that "[t]he only basis for reconsideration noted in the instant cause was the reweighing of the evidence discussed above. This is not sufficient." Id. at 317.

In analyzing motions for reconsideration, we have consistently stated that the standard of review for a motion for reconsideration is:

> whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co.

v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817(Fla. 1st DCA 1958).[1]

Gulf's Motion for Reconsideration

As noted above, in its rate case filing, Gulf sought to include the Company's investment associated with the North Escambia site of $26,751,000 ($27,687,441 system) in rate base as PHFU. Inclusive in this request, Gulf sought recovery through base rates of $2,877,000 ($2,977,838 system) in accrued carrying charges associated with the North Escambia site.

In its Motion, Gulf sought reconsideration of our Final Order only insofar as it excluded from rate base as PHFU a portion of the total costs Gulf previously identified as being associated with the North Escambia site. In particular, for the purposes of its Motion, Gulf sought reconsideration of costs associated with the North Escambia site totaling $22,674,000 ($23,467,543 system). Gulf asserted that this amount is limited to costs associated with land, land acquisition and site investigation. Thus, for the purposes of the Motion, Gulf excluded the carrying costs accrued through December 2011 on the North Escambia investment which the Company had previously argued constituted "site selection costs" as set forth in Rule 25-6.0423, F.A.C.

Gulf argued that we are bound by the principal of *stare decisis* to follow our precedent in past proceedings. In the instant case, Gulf stated that we mistakenly imposed a new requirement for cost recovery of plant investment. In particular, Gulf contended that we premised our decision on this issue upon the Company's failure to acquire a determination of need as a condition precedent to recovery of investment in land through base rates as PHFU, thereby impermissibly deviating from its decisions in our prior cases. As such, Gulf argued that we failed to consider that its decision to effectively require a determination of need as a condition of allowing cost recovery for a future generating plant site is an unprecedented departure from our practice. Moreover, Gulf asserted that the inappropriate focus on the absence of a prior determination of need led us to overlook or fail to fully consider uncontested evidence showing that the current acquisition of the North Escambia site is in the best long term interests of its customers.

In its Motion, Gulf argued that we have consistently employed a "reasonableness" standard in determining whether property is eligible for inclusion in PHFU. While acknowledging that considerations with respect to PHFU have "differed from case to case," Gulf asserted that our analysis with respect to this issue included some, or all, of the following: (1) the

[1] See Order No. PSC-11-0156-FOF-WU, issued March 7, 2011, in Docket No. 100104-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.; Order No. PSC-09-0571-FOF-EI, issued August 21, 2009, in Docket No. 080317-EI, In re: Petition for rate increase by Tampa Electric Company; Order No. PSC-07-0783-FOF-EI, issued September 26, 2007, in Docket No. 050958-EI, In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company.

need for generation, whether it be imminent or in the reasonably foreseeable future; (2) any unique characteristics of the land at issue, including its location and suitability for one or more distinct types of generation; (3) barriers to acquisition of the land in the future, including increasing acquisition costs and potential for encroachment by residential and commercial development; and (4) the overall circumstances which were prevailing at the time the acquisition decision was made. Gulf characterized the above-referenced components as the appropriate considerations in determining whether the property at issue should be included in PHFU. Gulf further noted that the existence of a need determination, or lack thereof, is mentioned nowhere in this precedent. Rather, Gulf contended that any suggestion that such a determination is warranted is irrelevant to the question of whether the North Escambia site should be included in Gulf's rate base as PHFU and represents an unprecedented departure from our past practice.

Gulf further specified that in making its determination on this matter, we ascribed weight to the fact that Gulf had no plans for construction of any generation, nuclear or otherwise, at the North Escambia site. Gulf argued that the consideration of this fact constitutes a mistake of fact and law as it deviates from the appropriate standard and the long standing practice of this Commission. Rather, Gulf asserted that the fact that a site will provide value as a future generation site satisfies the standard for inclusion in PHFU.

In addition, Gulf asserted that in making its determination on this issue, we failed to consider or address the prudence and reasonableness of Gulf's decision to purchase the North Escambia site. Gulf argued that the prudence and reasonableness of Gulf's decision is well established in the record in this proceeding. Although Gulf acknowledged that the Final Order does address Gulf's potential need for capacity, Gulf contended that we completely failed to address the value of maintaining nuclear generation as a viable option for Gulf to serve its customers. Gulf argued that the record evidence in this case established that the nuclear option was and is the most cost-effective option to meet Gulf's customers' future need for power under many reasonable planning scenarios. Gulf asserted that our failure to consider this evidence in rendering its decision constituted a mistake of fact or law.

Gulf further asserted that our decision to exclude the North Escambia site from rate base was premised upon three erroneous underlying conclusions. First, Gulf argued that we made a mistake of fact in determining that the Caryville site is available for any needed future generating plants. Second, that we made a mistake of law in concluding that potential future co-ownership of the North Escambia site would render it ineligible for inclusion in PHFU. Third, Gulf argued that we made a mistake of law in excluding the North Escambia site from PHFU for lack of an order granting a determination of need.

Finally, Gulf argued that we made a mistake of fact in assuming that the North Escambia site will remain available to serve Gulf's customers in the future if it is excluded from rate base. In support of this assertion, Gulf specified that we should fully understand the import of the decision we made in this case. In particular, Gulf contended that our decision to exclude the North Escambia site from rate base as PHFU leaves open the very real possibility that the Company, in the exercise of good business judgment, will divest itself of some or all of the property constituting the North Escambia site.

The Intervenors' Response

In their Response, the Intervenors asserted that Gulf's Motion should be denied because Gulf failed to demonstrate that we overlooked or failed to consider the matters which are the subject of its request. The Intervenors argued that the "mistake" to which Gulf points to as the primary justification for its Motion is not a "mistake" at all, but rather is a mischaracterization of the Final Order contrived by Gulf as a pretext for rearguing matters that were fully developed before, and considered by, us. Moreover, the Intervenors asserted that contrary to the premise which appears to underlie Gulf's Motion, there is no requirement that we mention each and every piece of evidence in its order.

In particular, the Intervenors asserted that the primary "mistake" identified by Gulf is that we, in making our determination on this issue, created a requirement that the Company obtain a determination of need as a prerequisite to including the North Escambia site in PHFU. The Intervenors argued that this is in fact a mischaracterization of our decision contained in the Final Order. The Intervenors noted that in each instance cited by Gulf in which we referred to a determination of need in conjunction with its decision regarding the North Escambia site it was referring to Gulf's own efforts to recover in base rates now the type of carrying costs that, under the provisions of Section 366.93, F.S., and Rule 25-6.0423, F.A.C., can be recovered "in advance" of the in-service date of a nuclear unit through alternative costs recovery means only after the requesting utility has petitioned for and received a determination of need for the nuclear unit. The Intervenors contend that the references to a "determination of need" in the decision portion of the Final Order thus were specific to Gulf's premature efforts to collect site selection and related carrying costs of a nuclear unit, and were unrelated to any consideration of whether the site qualifies for inclusion within PHFU pursuant to our general ratemaking authority. The Intervenors argued that the Final Order clearly indicated that we were both aware of this distinction and unpersuaded by Gulf's argument.

The Intervenors asserted that the above-referenced mischaracterization was effectively put forth by Gulf as a "straw man" to enable the Company to impermissibly reweigh the evidence in this proceeding. Citing Diamond Cab, *supra*, the Intervenors specify that it is fundamental that a motion for reconsideration cannot be used for the purpose of asking the decision maker to reweigh the evidence because the losing party disagrees with the decision. Yet despite this prohibition, the Intervenors note that in its Motion, Gulf places before us, for its reassessment, no less than 25 hearing transcript pages, several schedules within Exhibit 163 as well as pages 35, 37, and 38 of Exhibits 147. Moreover, the Intervenors note that Gulf itself on page 17 of its Motion acknowledges that some of the aforementioned evidence was both addressed by our staff in its recommendation and contained in the Final Order. The Intervenors contend that this statement is thus, tantamount to a confession that through its Motion Gulf is seeking a reweighing of the evidence.

The Intervenors further asserted that Gulf wrongly alleged that we "failed to consider" any evidence to which it did not refer to explicitly in the Order. Citing Jaytex, the Intervenors explained that it is axiomatic that the decision maker has no obligation to refer to each and every bit of record evidence in its decision. Thus, the Intervenors contend that we, in our Final Order, complied with the requirements of the law. By pointing to pieces of evidence that were not

treated explicitly in the Final Order, the Intervenors argue that Gulf has not demonstrated grounds for reconsideration.

The Intervenors further contend that contrary to the assertions of the Company, past decisions in other utilities' cases do not require us to grant Gulf's Motion in this proceeding. In particular, the Intervenors assert that in its Motion, Gulf erroneously attempts to invoke the doctrine of *stare decisis*. The Intervenors explained that this doctrine, to the extent that it applies in administrative proceedings, means simply that cases that have similar facts should be decided similarly, absent an articulated policy reason for departing from prior practice. The Intervenors then note that in decisions pertaining to PHFU, we conduct an analysis that is very fact specific. The Intervenors asserted that it requires, among other things, a showing that the utility will use the property for utility service-related purposes within a reasonable time period. In this case, the Intervenors asserted that the Company failed to meet the factual standard partly, but not solely, because the Caryville site that was the subject of a similar request in 1972 remains unused and fully available for generation expansion. The Intervenors asserted that during the evidentiary proceeding that culminated in the Final Order, the fact that Caryville was purchased in 1963 explicitly for the purpose of generation expansion, has been in PHFU since 1972, has not become part of the generation system during the forty years during which it has been part of PHFU, and does not today make the top four sites for generation expansion listed in Gulf's Ten Year Site Plan, constituted graphic proof that Gulf does not need the North Escambia site in the foreseeable future, if ever. The Intervenors argue that this plain fact sets Gulf's situation apart from other instances in which we have ruled on requests to place property in PHFU. Thus, Gulf's inability to make the required showing distinguishes Gulf's situation from the decisions to which it refers in its Motion.

The Intervenors further contend that we did not mistakenly regard the Caryville site to be available for nuclear generation. Citing to page 24 of the Final Order, the Intervenors note that we explicitly stated that the Caryville site is certified for two 500 megawatt coal units and that it could support combined cycle units, combustion turbines, and other options except for the nuclear option.

The Intervenors further argued that Gulf claimed, beginning on page 24 of the Motion, that we "mistakenly" assumed that the site will be available in the future, after its decision denying Gulf's request to include it in PHFU. However, a review of the Final Order demonstrates that we made no such finding and expressed no such assumption. Accordingly, the Intervenors contend that the possibility that Gulf may sell some of the property presents no such basis for reconsideration of the decision.

Finally, the Intervenors take issue with Gulf's invocation of the "regulatory compact." The Intervenors assert that Gulf uses this term in its effort to create, with respect to its acquisition of the North Escambia site, an aura of entitlement and a corresponding obligation of this Commission to approve the utility's action. However, the Intervenors argue that central to the theme of regulation that is part and parcel of the so called "regulatory compact'' is the proposition that the regulator will protect customers by limiting the costs they bear in rates to those expenditures that are necessary in nature and reasonable in amount. Thus, the Intervenors argue that our action to deny PHFU treatment, in recognition of the remote and speculative

nature of Gulf's nuclear ambition, the surfeit of property that is already in rate base and is available to meet other generation needs, the lack of any plan to use the North Escambia property for utility purposes within a reasonable time frame, as required by established policy, and the resulting unnecessary and unreasonable nature of the cost of the North Escambia property is perfectly consistent with applicable regulatory principles to which utilities refer as the regulatory compact.

DECISION

We find that Gulf's Motion fails to identify any point of fact or law that was overlooked or which we failed to consider in rendering our Final Order. As explained in greater detail below, we believe that Gulf is not asking us to look at newly discovered evidence or evidence that we failed to consider in making our determination, but is instead asking us to reweigh the evidence, which is not proper for reconsideration. Contrary to the assertions of Gulf, we are under no requirement to cite to every piece of evidence in the record in rendering our decision. Jaytex at 891. As such, we find that Gulf's Motion is hereby denied. For ease of reference, this Order follows the sequence of the Gulf's arguments in its Motion.

In Excluding the North Escambia Site from PHFU We Did Not Make a Mistake of Fact or Law by Failing to Consider the Well Established Precedent Regarding PHFU

In its Motion, Gulf invokes the principal of *stare decisis* in support of its assertion that we mistakenly failed to follow its own precedent when it allegedly created the requirement that a need determination is a prerequisite to the inclusion of property in rate base as PHFU. We agree with the Intervenors that this "mistake" cited by Gulf is merely a mischaracterization of the Final Order and thus, is not proper grounds for reconsideration.

We agree with Gulf that the principal of *stare decisis* should be followed by us in that cases with similar facts should be decided similarly, absent an articulated policy reason for departing from our prior practice. However, by necessity, our determinations with respect to PHFU must be based upon a fact intensive analysis of the evidence presented in each proceeding on a case-by-case basis.

In the instant case, Gulf's own witnesses testified that the primary reason for acquiring the North Escambia property was to preserve the nuclear option. Gulf then asserted in testimony that in deciding to pursue consideration of nuclear generation, Gulf relied on the recovery provided by Section 366.93, F.S. In furtherance of this argument, Gulf classified the entire $26,751,000 ($27,687,441 system), including $2,877,000 ($2,977,838 system) in accrued carrying costs, on the Company's books as a regulatory asset based upon the deferred accounting requirements of Rule 25-6.0423, F.A.C., which was adopted to implement Section 366.93, F.S. Gulf undertook the creation of this regulatory asset and began accrual of carrying charges without the prior approval of this Commission.

The Final Order, therefore, necessarily addresses Gulf's efforts to recover in base rates now the type of carrying costs that, under the provisions of Section 366.93, F.S., and Rule 25-

6.0423, F.A.C., can be recovered "in advance" of the in-service date of a nuclear unit through alternative cost recovery means only after the requesting utility has petitioned for and received a determination of need for the nuclear unit. In each instance in which we referred to the requirement of a determination of need in conjunction with its decision with respect to the North Escambia site, we clearly denoted that such a requirement was specific to Gulf's premature efforts to collect site selection and related carrying costs of a nuclear unit, and were made in addition to our consideration of whether the site qualifies for inclusion in PHFU.[2]

Contrary to the assertions of Gulf, the acquisition of a determination of need was never required by us as a prerequisite to the inclusion of property in rate base as PHFU. Rather, this requirement was limited solely to Gulf's attempts to recover carrying costs and related charges in base rates as PHFU. In particular, on page 26 of the Final Order, we specified that with respect to the "deferred carrying charge for the 4,000 acre Escambia Site and the costs of associated evaluations as nuclear site selection costs," both Section 366.93, F.S., and Rule 25-6.0423, F.A.C., establish a threshold criterion that it must obtain an affirmative order granting a determination of need before it can avail itself of the deferred accounting treatments afforded by the statute and rule. Gulf's own Motion appears to acknowledge this distinction and the nature of the significance that we attached to the requirement of a determination of need as applying to the deferred carrying charges and related costs.[3] In light of our decision declining to adopt Gulf's arguments regarding the application of Section 366.93, F.S., and Rule 25-6.0423, F.A.C., Gulf has specifically elected to omit these charges from reconsideration in its Motion.[4]

Moreover, our decision contained in the Final Order with respect to the continued inclusion of the Caryville site in PHFU clearly indicates that in this proceeding we did not create a new condition precedent in the form of a determination of need for the inclusion of property in PHFU as no such requirement was applied to that investment.

We agree with Gulf that the analysis with respect to the inclusion of property in PHFU should be predicated upon a fact-intensive reasonableness analysis, as was applied with each property in this case including the North Escambia site. In particular, we note that the Final Order does apply many of the considerations identified by Gulf as typical in an analysis of property inclusion in rate base as PHFU. Following the extensive analysis of the evidence present in the instant case, we simply found that Gulf had failed to meet this factual standard. Given the presence of this analysis in this proceeding, we find that the Final Order comports with our past practice. Moreover, because we do not create a novel condition precedent to the inclusion of property in PHFU, Gulf has not identified a mistake of fact or law. Therefore, we find that Gulf has not identified any point of fact or law that was overlooked or which we failed to consider in rendering our Final Order.

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[2] See Final Order pp 3, 5, 23, and 26.

[3] See Gulf Motion p. 2, in which Gulf specifies that "[t]hese accrued carrying costs were the subject of the legal issue raised and decided as Issue 1, which Gulf is not seeking to address through this motion. In resolving Issue 1, the Commission concluded that a determination of need is a condition precedent to the accrual of carrying costs under the Nuclear Cost Recovery Rule and its enabling statute, section 366.93, Florida Statutes."

[4] Id.

In Excluding the North Escambia Site From PHFU We Did Not Fail to Consider Important Facts Demonstrating the Value of Preserving the Nuclear Option for Gulf's Customers in the Future

In its Motion, Gulf asserted that we mistakenly failed to consider or address the prudence and reasonableness of Gulf's decision to purchase the North Escambia site. In support of this assertion, Gulf specifies that the Final Order does not explicitly refer to certain pieces of evidence cited by Gulf in its Motion.

It is well established law that the decision maker has no obligation to refer to each and every piece of record evidence in rendering its decision. Jaytex at 891. As noted by the Intervenors, *supra* in Jaytex, the First District has clearly specified that "it frequently occurs that an opinion will discuss some phases of a case, but will not mention others. Counsel should not from this fact draw the conclusion that the matters not discussed were not considered." Id.

Though not a separate issue in this proceeding, in rendering our decision, cited to several portions of the evidentiary record regarding the reasonableness of both Gulf's decision to purchase the North Escambia site and inclusion of the North Escambia site in rate base as PHFU pursuant to its general ratemaking authority.[5] On page 17 of the Motion, Gulf even acknowledges this fact when it specifies that ". . . some of this evidence was addressed in staff's recommendation and mentioned in the Commission order . . ." Thus, the failure to catalogue every piece of evidence pertaining to this issue in the Final Order does not constitute a mistake of fact or law which would provide grounds for a motion for reconsideration. Jaytex at 891. Moreover, by the Company's own admission, evidence regarding Gulf's decision to purchase the North Escambia site and inclusion of the North Escambia site in rate base as PHFU was included in the Final Order. Therefore, we find that Gulf has not identified any point of fact or law which was either overlooked or which we failed to consider in rendering our Final Order.

Our Rationale for Excluding the North Escambia Site from Rate Base as PHFU was Neither Based on Erroneous Underlying Conclusions Nor Mistakes Which Should be Corrected

In its Motion, Gulf identified three underlying conclusions which it asserts were erroneous and thereby mistakenly led us to conclude that Gulf failed to support the inclusion of the North Escambia site in PHFU. In particular, Gulf asserted that we mistakenly found that the Caryville site was available and sufficient for any future generation needs, including a nuclear generating plant. We agree with the Intervenors that this argument is baseless, as page 22 of the Final Order clearly specifies that Gulf "[w]itness Burroughs testified that it was his understanding that the Caryville site is certified for two 500 megawatt coal units. He further stated that the Caryville site also could support combined cycle units, combustion turbines, and other options *except for the nuclear option.*" (emphasis added)

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[5] See Final Order p. 26, containing Table 4 which provides not only the land acquisition costs but additional site acquisitions costs, site investigation costs, need determination filing costs, project support costs, costs associated with Project Frank, the UWF study costs, as well as the carrying costs through December 31, 2011.

Gulf further asserted that we found that in the event that Gulf embarked upon the building of nuclear generation, that Gulf may share ownership of the North Escambia site with its sister companies. This consideration arose largely from testimony and responses provided by both Gulf's own witnesses[6] as well as OPC witness Schultz. Gulf now argues in its Motion that while both "intuitive and theoretically correct," the possibility of future shared ownership of generating facilities erroneously led us to disqualify the North Escambia site for inclusion in rate base as PHFU.

This argument lacks merit as it is mischaracterizes our consideration of this issue and ascribes to it greater determinative weight than either the record or the Final Order reflects. As part of its fact-intensive analysis conducted with respect to the inclusion of property in PHFU, we analyzed, in part, the evidence in the record underlying the potential for shared ownership of future nuclear generation facilities on the North Escambia site as it pertained to the reasonableness of Gulf's decision to purchase the property in preservation of the "nuclear option." Therefore, we find that Gulf has not identified any point of fact or law which was either overlooked or which we failed to consider in rendering our Final Order.

Finally, Gulf argues that we made a mistake of law in excluding the North Escambia site from PHFU for lack of any order granting a determination of need. For the reasons described above, we find that the Final Order clearly indicates that the references to a "determination of need" were specific to Gulf's own premature efforts to collect site selection and related carrying costs of a nuclear unit, and were unrelated to our extensive consideration of whether the site qualified for inclusion in base rates within PHFU. The Final Order makes this distinction clear and we simply found Gulf's arguments were unpersuasive. As such, we find that the "demonstrably erroneous underlying conclusions" identified by Gulf in its Motion do not constitute a mistake of fact or law, nor do they identify any point of fact or law which was not considered by us in rendering our decision in this proceeding.

We Did Not Assume that the North Escambia Site Will Remain Available to Serve Gulf's Customers in the Future if it is Excluded from Rate Base as PHFU

In its Motion Gulf claims that we made a mistake of fact by assuming that the North Escambia site will be available in the future, following its decision denying Gulf's request to include it in PHFU. We note that the Final Order includes no such finding and contains no such assumption. Accordingly, we find that this argument is not a mistake of fact and, therefore provides no basis for reconsideration of our decision. Because Gulf has failed to identify a point of fact or law which was overlooked or which was not considered in the rendering of the Final Order, the Motion shall be denied.

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[6] See Gulf's response to OPC's Second Set of Interrogatories, No. 109(e) contained within Exhibit 114, in which Gulf specified that "[d]epending on the actual type and timing of an eventual generating resource addition constructed on the site, Gulf may seek the participation of potential co-owners in order to facilitate the addition. Such co-owners may potentially be other companies within the Southern electric system or unaffiliated companies."

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Gulf Power Company's Request for Oral Argument on its Motion for Reconsideration is granted. It is further

ORDERED that Gulf Power Company's Motion for Reconsideration is denied. It is further

ORDERED that this docket shall be closed upon the expiration of the time for appeal.

By ORDER of the Florida Public Service Commission this 3rd day of August, 2012.

ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CMK

NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.